(1)
02 401 SEP 9 2002

No.

IN THE

Supreme Court of the United States

HONGYING LIU-LENGYEL,
Petitioner,

v.

NEW ENGLAND MACHINERY, INC.,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

GARY M. GLASSMAN
Counsel of Record
P.O. Box 22127
Lake Buena Vista, Florida 32830
(407) 903-1245

36 pp

QUESTION PRESENTED

The question presented is whether the Title VII federal court action was barred by the doctrines of *res judicata* or collateral estoppel.

STATEMENT PURSUANT TO RULE 29.6

Respondent New England Machinery, Inc. has no known corporate parents, and no known publicly held company owns 10% or more of New England Machinery's stock.

TABLE OF CONTENTS

Page

Question Presented i

Statement Pursuant To Rule 29.6 ii

Table Of Contents iii

Table Of Cited Authorities iv

Table Of Appendices v

Opinions Below 1

Statement Of Jurisdiction 1

Statutory Provisions Involved 1

Statement Of The Case 1

Reasons For Granting The Writ 3

Conclusion 7

TABLE OF CITED AUTHORITIES

Page

Alexander v. Gardner-Denver Co.,415 U.S. 36, (1974) 4, 5

Amey, Inc. Gulf Abstract & Title, Inc., 758 F.2d 1486 (11th Cir. 1985), *cert. denied*, 475 U.S. 1107 (1986) 6

Astoria Federal Savings and Loan Association v. Solimino, 501 U.S. 104 (1991) 5

Chandler v. Roudebush, 425 U.S. 840 (1976) 5

Johnson v. Railway Express Agency, Inc., 421 U.S. (1975) 5

McDonnell Douglas Corp. v. Green, 411 U.S. 792, (1973) 5

Newman v. Piggie Park Enterprises, 390 U.S. 400, (1968) 4

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979) 7

Siegel v. Lepore, 234 F.3d 1163(11th Cir. 2000) 7

TABLE OF APPENDICES

Page

Appendix A — Opinion of the United States Court of Appeals for the Eleventh Circuit Dated and Decided June 11, 2002. ..... 1a

Appendix B — Opinion and Order of the United States District Court for the Middle District of Florida Dated and Filed October 19, 2001 ..... 4a

Appendix C — Statutes 21a

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The district court's opinion (Wilson, Magistrate Judge) granting the respondent's motion for judgment as a matter of law is not published. The court of appeals opinion (per curiam) is not published.

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and order on Jun 11, 2002. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of 42 U.S.C. § 2000e, *et. seq.* relevant to this petition are reprinted in the Appendix.

STATEMENT OF THE CASE

This is a sexual harassment case that was brought by the petitioner against the respondent under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and the Florida Civil Rights Act, Chapter 760, Florida Statutes. The petitioner claimed, in her suit, that she had been forced to have sexual relations with the president of the respondent, Geza Bankuty ("Bankuty"), on ten different occasions.

Bankuty testified that he never had any sexual contact with the petitioner. Moreover, the respondent claimed that the federal court action was barred by *res judicata* and collateral estoppel because the plaintiff's claims of forced sexual relations were litigated, and resolved in Bankuty's favor, in a previous state court action.

In the prior state court action, Bankuty and his wife sued the petitioner and her husband alleging that the petitioner and her husband had made defamatory statements regarding Bankuty in that Bankuty had forced sexual relations with the petitioner, and that these statements had been published to third parties.

The Circuit Court for the Twelfth Judicial Circuit of the State of Florida, Manatee County, ruled in the state court action that the acts of forced sexual relations by Bankuty against the petitioner had not taken place. The court awarded damages, and enjoined the petitioner and her husband from repeating the allegations of forced sexual relations.

In the present federal court action, the respondent, relying on the state court's decision, moved for summary judgment asserting that the petitioner's sexual harassment claim was barred by *res judicata* and collateral estoppel. The district court denied the motion for summary judgment ruling that *res judicata* was not applicable because the relief sought in the two cases was different, and that collateral estoppel was inapplicable because the state court's finding that there was no forcible, non-consensual rape did not necessarily preclude a claim of sexual harassment.

The federal court action proceeded to a jury trial. The testimony in the federal court action was the same as in the state court action. However, in the federal court action, the jury found in favor of the petitioner, concluding that she was subjected to unwelcome sexual harassment. Judgment in the amount of $75,000.00 was entered in the petitioner's favor.

The respondent filed a timely motion for judgment as a matter of law, or, in the alternative, for a new trial. The basis for the respondent's motion was that the jury verdict was precluded by the doctrines of *res judicata* and collateral estoppel.

The district court granted the respondent's motion for judgment as a matter of law. The court found that the doctrines of *res judicata* and collateral estoppel barred the jury verdict.

The petitioner appealed the district court's decision to the court of appeals. The Eleventh Circuit Court of Appeals affirmed the decision of the district court on June 11, 2002. This petition for a writ of certiorari ensued.

The district court had jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

REASONS FOR GRANTING THE WRIT

This petition should be granted to review the court of appeal's inconsistent application of the doctrines of *res judicata* and collateral estoppel with the prior decisions of this Court concerning the importance of anti-discrimination laws.

Congress passed Title VII of the Civil Rights Act of 1964 ("Act") to assure equal employment opportunities by eliminating those practices that discriminate on the basis of

race, color, religion, sex, or national origin. While the Act contains an administrative process, final responsibility for all aspects of enforcement of the Act rests with the federal judiciary. The Act authorizes courts to issue injunctive relief, and to require such affirmative action as may be appropriate to remedy the unlawful effects of employment discrimination.

Congress, aside from giving ultimate authority to the federal courts, gave private individuals an important role in enforcement of the Act. Actions by private individuals remains an essential means of obtaining judicial enforcement of the Act. In private actions, the litigant not only redresses his or her own injury, but also vindicates the important congressional policy against employment discrimination. A point that should never be overlooked is that Congress indicated that it considered the policy against employment discrimination to be of the "highest priority." *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968).

Congress went even further. It not only made the eradication of employment discrimination a major priority, but the Act also evinces Congress general intent to accord parallel or overlapping remedies against discrimination. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47-48 (1974). As this Court stated in *Alexander*, "[c]onsistent with this view, Title VII provides consideration of employment-discrimination claims in several forums. (citations omitted). And, in general, submission of a claim to one forum does not preclude a later submission to another...the legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes."

The *Alexander* holding is but one of four decisions of this Court that demonstrate a plaintiff should not be barred

from pursuing a Title VII claim due to an earlier adverse determination.

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798-799 (1973), this Court refused to prevent a plaintiff from bringing suit in federal court because of an Equal Employment Opportunity Commission ("EEOC") determination of no reasonable cause. "The Act does not restrict a complainant's right to sue to those charges as to which the [EEOC] has made findings of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of claims of employment discrimination in the federal courts." *Id.*

In *Alexander*, *supra.*, this Court repeated the same theme by permitting a Title VII suit to proceed despite a prior adverse arbitration under a collective-bargaining agreement.

In two subsequent decisions, this Court adhered to the *Alexander* and *McDonnell Douglas* rationale. In *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 461 (1975), the Court held that Title VII and 42 U.S.C. § 1981, although related and directed to most of the same ends, provide "separate, distinct, and independent" discrimination remedies. Finally, in *Chandler v. Roudebush*, 425 U.S. 840 (1976), this Court permitted a federal employee to bring a Title VII suit even though the Civil Service Commission had affirmed a federal agency's rejection of the employee's discrimination claim. See also: *Astoria Federal Savings and Loan Association v. Solimino*, 501 U.S. 104 (1991).

In each of these four cases, this Court, relying on the clear intent of Congress to prohibit employment discrimination, refused to close the doors of the federal courthouse to a Title VII plaintiff despite the plaintiff's failure before the EEOC, an arbitrator, and a federal agency.

It is against this Court's prior decisions and the intent of Congress that the Eleventh Circuit Court of Appeals decision must be measured.

In the present case, the court of appeals forfeited the petitioner's successful jury verdict on her Title VII claim due to a prior state court defamation action.

The court of appeals decision is contrary to prior decisions of this Court that held that Congress did not intend to foreclose an action under Title VII because of an adverse proceeding in another forum. The Eleventh Circuit Court of Appeals has disregarded clear congressional intent and this Court's case law by ruling that a prior state court defamation action foreclosed the petitioner's Title VII suit. If a plaintiff in a Title VII action can proceed even though he or she was unsuccessful before the EEOC, an arbitrator, and a federal agency, there is no reason to prohibit the petitioner from going forward after an adverse state court action on a non-Title VII claim.

The petition for certiorari should be granted to correct the court of appeal's misapplication of this Court's decisions and Congressional intent.

B. This petition should be granted to review the court of appeals misapplication of the mutuality of parties requirement under Florida *res judicata* and collateral estoppel law.

To begin, it is important to note that this Court has differentiated *res judicata* and collateral estoppel as follows: "Under the doctrine of *res judicata,* a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the

doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979).

When applying these doctrines, the court should look to the law of Florida. *Amey, Inc. Gulf Abstract & Title, Inc.*, 758 F.2d 1486, 1509 (11th Cir. 1985), *cert. denied*, 475 U.S. 1107 (1986). Florida law adheres to the traditional requirement of mutuality of parties in its application of *res judicata* and collateral estoppel. *Siegel v. Lepore*, 234 F.3d 1163, 1172 (11th Cir. 2000).

In the present case, there is no mutuality of parties. The respondent in the federal court action was not a party in the state court action. That is undisputed. However, the court of appeals attempts to circumvent this fact by claiming that the respondent and Bankuty are in privity, and that the respondent "had an interest in the previous state suit." (Appendix A, p.3a)

The respondent had no interest in the state court action. If it had, then Bankuty could have named, in addition to himself and his wife, New England Machinery, Inc. as a plaintiff in the state court action. The respondent was not a named party because none of the alleged defamation was ever directed at New England Machinery, Inc.

The court of appeals mistakenly held that there was mutuality of the parties in the federal court action and the state court action. The court misapplied its own case law, and this petition should be granted to correct the court's error.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

GARY M. GLASSMAN
Counsel of Record
P.O. Box 22127
Lake Buena Vista, Fl. 32830
(407) 903-1245
Attorney for Petitioner

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16542
Non-Argument Calendar

D.C. Docket No. 99-02491-CV-T-24

HONGYING LIU-LENGYEL,

Plaintiff-Appellant,

versus

NEW ENGLAND MACHINERY, INC.,
a Florida for-profit corporation,

Defendant-Appellee.

Appeal from the United State District Court
for the Middle District of Flroida

(June 11, 2002)

Before ANDERSON, DUBINA and GODBOLD, Circuit Judges.

PER CURIAM:

Plaintiff Hongying Liu-Lengyel brought this sexual harassment suit under 42 U.S.C. § 2000e, *et seq.* ("Title VII") and the Florida Civil Rights Act, Fla. Stat. §760 *et. seq.*

("FCRA") against defendant New England Machinery, Inc. ("NEM"). The jury returned a verdict for the Plaintiff. NEM filed a renewed motion for judgment as a matter of law based on res judicata and collateral estoppel. NEM argued that Plaintiff's sexual harassment claim was barred because the same cause of action was already adjudicated in the Flroida state court case entitled *Geza Bankuty, et. al. V. Hongying Liu-Lengyel, et. al.* In the state lawsuit Bankuty accused Liu-Lengyel of defamation and intentional infliction of emotional distress resulting from the Liu-Lengyel's publication of statements that Bankuty had raped Liu-Lengyel. Liu-Lengyel alleged truth as a defense to the defamation claim and filed a counterclaim against Bankuty that alleged assault, battery, and intentional infliction of emotional distress based upon the same alleged rape. The state court ruled for Bankuty. In this case, the district court granted Defendant's motion for judgment as a matter of law. Plaintiff appeals. We affirm.

Plaintiff raised one issue on appeal: whether the district court erred when it held that NEM is in privity with Bankuty, its shareholder, president, and chief executive officer, so as to satisfy the "identity of parties" requirement of res judicata and collateral estoppel under Florida law. Plaintiff contends that the defendant in this federal case is NEM and the defendant in the state case was Bankuty. Therefore the parties in the two cases are not the same and thus neither res judicata nor collateral estoppel applies. NEM, asserts that the identity of parties element is met because it, although not nominally a party in the state case, was in privity with Bankuty. Specifically, NEM contends that the relationship between it and Bankuty, its shareholder, president, and chief executive officer establishes privity between the parties.

We review *de novo* a district court's grant of judgment as a matter of law. *See Isenbergh v. Knight-Ridder Newspaper Sales, Inc.*, 97 F.3d 436, 439 (11th Cir. 1996). We review *de*

novo a district court's conclusions regarding res judicata. *See Jang v. United Technologies Corp.*, 206 F.3d 1147, 1149 (11th Cir. 2000).

Common to both res judicata and collateral estoppel, under Florida law, is the element of identity of person or parties to the cause of action. The doctrine of res judicata applies when four "identities" exist: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of parties; and (4) identity of the quality of the person in or against whom the claim is made. *See Albrecht v. State*, 444 So.2d 8, 12 (Fla. 1998). Collateral estoppel may be applied, under Florida law, when: (1) the parties and issues are identical; (2) the particular matter was fully litigated and determined; (3) the contest resulted in a final decision; and (4) the contest took place in a court of competent jurisdiction. *See Mobil Oil Corp. v. Shevin*, 354 So.2d 372, 374 (Fla. 1997). The identity of parties requirement includes a party who is "technically not a party when that person had an interest in the prior litigation and had the right to participate therein." *Red Carpet Corp. of Panama City Beach v. Roberts*, 443 So.2d 377, 380 (Fla. App. 1983).

Here, the undisputed evidence shows that NEM is a closely held corporation held by Bankuty. The parties stipulated that Bankuty is a shareholder, director, and chief executive officer of NEM. Bankuty was a party to the state suit. Hence, the district court did not commit reversible error when it held that "Identity of parties" element of res judicata and collateral estoppel had been met and granted Defendant's motion for judgment as a matter of law.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

HONGYING LIU-LENGYEL,

Plaintiff,

v. CASE NO. 8:99-CV-2491-T-TGW

NEW ENGLAND MACHINERY, INC.

Defendant.

ORDER

In this sexual harassment case, the plaintiff testified that, during the first nine months of 1997, she was raped ten times by the chief executive of the defendant. She did not testify to any other incidents that would support a claim of sexual harassment. The chief executive, in turn, testified that he never had any sexual contact with the plaintiff. The jury found that the plaintiff was subjected to unwelcome sexual harassment, but, inexplicably, awarded no compensatory damages, although it did award the plaintiff $75,000 in punitive damages. Under the testimony and the theories advanced by the parties, it is hard to make sense of this verdict. Neither side, however, has challenged the verdict on the ground that it is error for a jury to award no compensatory damages, but $75,000 in punitive damages, to a plaintiff whose claim of sexual harassment was based solely on allegations of ten rapes.

IN the absence of such a challenge, it is inappropriate for me to overturn the bizarre verdict on that ground.

While the defendant does not attack the oddity of the verdict, it has filed a timely motion for judgment as a matter of law or, in the alternative, for anew trial (Doc. 58) asserting other contentions, most of which have been raised throughout the case. The defendant's primary arguments of res judicata and collateral estoppel are based upon a prior state court decision finding that the allegations of rape are slanderous. In my view, the doctrines of res judicata and collateral estoppel preclude the plaintiff from relitigating the issue of the rapes and thus bar the sexual harassment claim. Consequently, the defendant's motion for judgment as a matter of law will be granted.

I.

On October 29, 1999, plaintiff Hongying Lui-Lengyel filed this lawsuit against her former employer, New England Machinery, Inc. ("NEM"), asserting that it had subjected her to hostile work environment sexual harassment , in violation of Title VII of the civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., and the Florida Civil Rights Act ("FCRA"), Fla. Stat. §760 et seq. (Doc. 1).[1] As indicated, the plaintiff's claim of sexual harassment comprised allegations that Geza Bankuty, NEM's president and chief executive officer, raped her repeatedly during the course of her employment at NEM (id.). In its answer, NEM denied the plaintiff's allegations and asserted that the claim was barred by

---

[1] Because the plaintiff has asserted a claim of sexual harassment under both federal and state law, she has, in fact, asserted two claims. Both claims,, however, are based upon the same evidence. Thus, if one of the claims is barred by res judicata or collateral estoppel, so is the other. Accordingly, to simplify the discussion of those doctrines, the allegations of sexual harassment will be treated as a single claim.

res judicata and collateral estoppel because the plaintiff's allegations of rape were litigated, and resolved in Bankuty's favor, in a previous state court lawsuit (Doc. 10).

The state court litigation referred to by the defendant is Geza Bankuty and Ilona R. Bankuty v. Hongying Liu-Lengyel and Alphonz Lengyel (see Doc. 14, Composite Ex. A). In the lawsuit, which was filed in the Circuit Court for the Twelfth Judicial Circuit in Manatee County, Florida (Case No. 1998CA-280), the Bankutys accused the Lengyels of defamation and intentional infliction of emotional distress resulting from the Lengyels' publication of statements that Geza Bankuty had raped Hongying Liu-Lengyel (id.). The Lengyels alleged truth as a defense to the defamation claim and also filed a counterclaim against Geza Bankuty alleging assault, battery, and intentional infliction of emotional distress based upon those same allegations of rape (id.).[2]

The state court claims were tried in a two-day non-jury trial, during which Liu-Lengyel testified that she was raped by Bankuty in a "animalistic and brutal" manner "probably more than ten times" (see Doc. 16, pp. 28, 43, 90, 95). She recounted several alleged rapes occurring between February and September 1997 on business trips, at NEM's offices, at Bankuty's home, and at her own home (Doc. 17, pp. 133-158). Bankuty flatly denied Liu-Lengyel's allegations (id. At p. 253).

The state court ultimately rejected Liu-Lengyel's allegations of rape, finding that they were outrageous and concocted for the purpose of extorting money from the Bankutys or retaining her job which she was in peril of losing. The court's decision further precluded the Lengyels from even

---

[2] Alphonz Lengyel also sued for loss of consortium and intentional infliction of emotional distress arising from the same circumstances (Doc.14, Comp. Ex. A).

repeating those allegations of rape again. Specifically, the court stated:

> 2. Defendants statements which form the basis of the Plaintiffs' suit for defamation are that Plaintiff, Geza Bankuty forced Hongying Liu-Lengyel to have "brutal, animalistic and maniac" non-consensual sex with him on a number of occasions, i.e., that the Plaintiff Geza Bankuty repeatedly and forcibly raped the Defendant, Hongying Liu-Lengyel.
>
> 3. The court find that these statements are slander per se . . . .
>
> . . . .
>
> 7. Repeated the allegations of rape to Ilona Bankuty with the intent to leverage these claims into either a secure job for Defendant Hongying Liu-Lengyel or a large cash payment in exchange for . . . keeping the allegations of rape private. The court finds these allegations were intentional [and] outrageous....
>
> . . . .
>
> Therefore, it is Ordered and Adjudged,
>
> a. Defendants Hongying Liu-Lengyel and Alphonz Lengyel have defamed the Plaintiff Geza Bankuty....
>
> b. Defendants Hongingying Lui-Lengyel and Alphonz Lengyel are permanently enjoined from repeating to third parties ... that Plaintiff Geza Bankuty forcibly raped the Defendant Hongying Liu-Lengyel between February 1997 and September 1997, in China, or in Virginia, or at the business office or home of the Plaintiff or at the home of the Defendant.

(Final Judgment, Doc. 14, Comp. Ex. A)(citation omitted).

Relying upon the state court's finding that Liu-Lengyel's allegations of rape were slanderous, the defendant moved for summary judgment in this case, asserting that the plaintiff's sexual harassment claim was barred by res judicata and collateral estoppel (Doc. 14). Judge Bucklew denied the motion, holding that res judicata was not applicable because the relief sought in the two cases was different and that collateral estoppel was inapplicable because the state court's finding that there was no forcible, non-consensual rape did not necessarily pr5eclude a claim of sexual harassment (Doc. 27, pp. 3-4).

The parties subsequently consented to the jurisdiction of a United States Magistrate Judge (Doc. 35). The sexual harassment claim was then tried before a jury (see Docs. 42-44). As in the state court action, Liu-Lengyel testified that Bankuty raped her repeatedly between February and September 1997 (Doc. 54, pp. 111-177). Thus, she described ten alleged sexual attacks by Bankuty in various locations, including on a business trip, at NEM's offices, at Bankuty's home, and at their own home (id.). However, unlike the state court judge, the jury in this case found in favor of Liu-Lengyel, concluding that she was subjected to unwelcome sexual harassment (Doc. 49). Accordingly, judgment was entered in the plaintiff's favor (Doc. 50).

The defendant then filed a timely motion for judgment as a matter of law, or, in the alternative, for a new trial (Doc. 58). The trust of the defendant's motion is that the ju5ry verdict is precluded by the doctrines of res judicata and collateral estoppel. Alternatively, it argues that there was insufficient evidence to support the jury's verdict. The defendant also challenges the timeliness of the plaintiff's Title VII claim and contends that certain court rulings were erroneous and prejudicial. After the plaintiff submitted a memorandum in opposition to the motion (Doc. 63), oral argument was heard on the matter (Doc. 65).

II.

The well-established standards for resolving the defendant's motion for judgment as a matter of law under Rule 50 were summarized in Isenbergh v. Knight Ridder Newspaper Sales, Inc., 97 F.3d 436, 439 (11th Cir. 1996), cert. denied, 521 U.S. 1119 (1997) (citations omitted) as follows:

> In considering a motion for judgment as a matter of law, a court must view all the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of the nonmoving party.... The motion should be granted only if upon such consideration, the court finds that reasonable people in the exercise of impartial judgment could not arrive at a contrary verdict.... The court may not weigh the evidence or decide the credibility of witnesses.... The nonmoving party must provide more than a mere scintilla of evidence to survive a motion for judgment as a matter of law; "there must be a substantial conflict in evidence to support a jury question."

III.

As indicated, a primary contention by the defendant is that the plaintiff's sexual harassment claim is barred by the doctrine of res judicata because the same cause of action was already adjudicated in the state court lawsuit (Doc. 58, pp. 4-8). That contention appears meritorious.

Res judicata bars a subsequent claim when a final judgment has been entered on the merits of the same cause of action in a prior lawsuit between the parties. Albrecht v. State,

444 So.2d 8, 12 (Fla. 1984). Thus, "[o]nce a party has had an opportunity to litigate a matter in an action in a court of competent jurisdiction, he should not be permitted to litigate it again to the harassment and vexation of his opponent." New River Yachting Ctr. V. Bacchiocchi, 407 So.2d 607, 609 (Fla. App. 1981).

Where, as here, the first suit is brought in state court and the second suit is brought in federal court, the state's law of res judicata is to be applied. Migra v. Warren City Sch. Dist. Bd. Of Educ., 465 U.S. 75, 81 (1984); Amey, Inc. v. Gulf Abstract & Title, Inc., 758 F.2d 1486, 1509 (11th Cir. 1985), cert. denied, 475 U.S. 1107 (1986). Federal courts, furthermore, are required under 28 U.S.C. 1738 to give the same preclusive effect to a state court judgment as that judgment would enjoy in the courts of the state in which it was rendered. Migra v. Warren City Sch. Dist. Bd. Of Educ., supra, 465 U.S. at 80-81.

Under Florida law, the doctrine of res judicata applies when four "identities" exist: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of parties of the action; and (4) identity of the quality of the person for or against whom the claim is made. Albrecht v. State, supra, 444 So.2d at 12; Stockton v. Lansiquot, 838 F.2d 1545, 1546 (11th Cir. 1988), cert. denied, 488 U.S. 891 (1988) (applying Florida law). In this case, all four identities were met.

The first element of res judicata, "identity of the thing sued for," examines whether the recovery sought in the two actions is the same.[3] This element was satisfied in this case by the time

---

[3] There are Florida decisions indicating that failure to satisfy this element is not dispositive when there is a strong factual connection between the claims. See City of Anna Maria v. Miller, 91 So.2d 333, 335 (Fla. 1956)(en banc)("if the claim or cause of action is substantially the same in both actions, it is not material that the relief demanded is in some measure different")(quoting 2 Freeman, Judgments, §683); Pumo v. Pumo, 405 So.2d

of trial because the plaintiff at that point was seeking the same type of recovery–money damages– that had been sought in the state court action. Thus, while the plaintiff had initially requested injunctive relief, reinstatement, and back and front pay, the plaintiff had abandoned that relief prior to trial and was only seeking non-economic compensatory damages, just as she had requested in the state court action.[4] Notably, this element is still satisfied even if different amounts of damages were sought in the two cases. See Aquatherm Ind. Inc. v. Florida Power & Light Co,, 84 F.3d 1388, 1395 (11th Cir. 1996); Amey, Inc. v. Gulf Abstract & Title, Inc., supra, 758 F. 2d at 1509. Accordingly, the first element of res judicata is met.

The second element of res judicata requires the court to determine whether both lawsuits involve the same cause of action. This is not a formalistic inquiry into the labels attached to the claims. Stockton v. Lansiquot, supra, 838 F.2d at 1546. Rather, two cases involve the same cause of action for the purposes of res judicata when the facts essential tot he maintenance of both lawsuits are the same. McDonald v. Hillsborough County Sch. Bd., 821 F.2d 1563, 1565 (11th Cir. 1987). This does not, however, mean that the testimony in the second cause must disclose the precise facts that were testified to in the first action, but only that the testimony "in essence" is the same. Gordon v. Gordon, 59 So.2d 40, 45 (Fla. 1952).

224, 226 (Fla. App. 1981)("a request for different relief does not prevfent the first proceeding from serving as a bar to a second action").

[4] This change of circumstance warrants a conclusion different than the court's summary judgment ruling, which was based upon the recovery originally sought in the plaintiff's complaint. It is noted that the plaintiff has made no contention, and has cited no authority, for the notion that the elements of res judicata are only to be assessed based upon the allegations in the complaint in the second action. There is no apparent6 reason why the elements cannot be applied to the facts generated at a trial in a second lawsuit.

Here, it is clear that the same facts were essential tot he maintenance of both lawsuits. Thus, both complaints contained nearly identical factual allegations (compare Doc. 1, ¶¶12-14 with Doc. 14, Comp. Ex A, complaint, ¶¶41, 42). Significantly, the pa5rties conducted no discovery in this case, instead relying upon the facts they discovered in the state court action (Doc. 60, p. 4,4 n.1). More importantly, Liu-Lengyel's core testimony at both trial s consisted of allegations that she was raped repeatedly by Bankuty, commencing in February 1997 during a business trip to china, and ending in September 1997, when Bankuty allegedly raped her in her Sarasota home (Doc. 16, p. 38; Doc. 17, pp. 137, 155, 157; Doc. 54, pp. 111-112, 118-119, 173, 176). Indeed, the plaintiff has not denied the similarity the fact issues. Finally, resolution of the rape allegations was dispositive of both lawsuits. Therefore, there is identity of the causes of action.

Res judicata requires, third, that there be "identity of persons and parties [to] the action." However, exact identity of parties is not critical. Stockton v. Lansiquot, supra, 838 F.2d at 1546; McDonald v Hillsborough County Sch. Bd., supra, 821 F.2d at 1965-66. Thus, this requirement is satisfied if the parties in the subsequent case are either identical to, or in privity with, the parties in the earlier proceeding. Stockton v. Lansiquot, supra, 838 F.2d at 1546.

The defendant NEM asserts that there is an identity of parties in these actions because plaintiff Liu-Lengyel was a party to both actions, and it, although not nominally a party in the previous lawsuit, was in privity with Geza Bankuty, Liu-Lengyel's adversary in the prior action. Specifically, the defendant contends that the relationship between NEM and Geza Bankuty, its president, chief executive and primary shareholder, establishes privity between those parties (Doc. 58, p. 8).

Generally, corporations are not in privity with, and are not personally bound by, judgments for or against their stockholders and officers. See Restatement (Second) of Judgments §59. However, "if the corporation is closely held, in that one or a few persons hold substantially the entire ownership in it, the judgment in an action by or against...the holder of ownership...is conclusive upon the corporation...." Id. at §59(3), (3)(b).[5]

The uncontroverted evidence in this case shows that NEM is a corporation closely held by Geza Bankuty. Thus, the parties stipulated that Bankuty is a shareholder and director of NEM, and also serves as its chief executive officer (Doc. 29, p. 3, ¶VII). Furthermore, Bankuty's uncontroverted testimony revealed that he is the company's founder, and the creator and owner of over forty patented designs for its packaging equipment (Doc. 55, pp. 198, 215). Thus, Bankuty summarized that, "technically everything belongs to [him]" (id. at 215). Therefore, the evidence shows that NEM is a closely held corporation and, consequently, NEM and Bankuty are in privity. Accordingly, the identity of parties requirement has been satisfied. See also McDonald v. Hillsborough County Sch. Bd., supra, 821 F.2d at 1965-66 (privity found as to two employees of agency that, by contract, had commonality of interest with party in first lawsuit).

---

[5] Thus, it is reasoned that "when the corporation is closely held...[the] interests of the corporation's management and stockholders and the corporation itself generally fully coincide." Restatement (Second) of Judgments §59 cmt. E. Therefore, "[w]hen the controlling owner is the party to the litigation, his opportunity and incentive to litigate issues commonly affecting him and the corporation is ordinarily sufficient to treat his participation as being on behalf of the corporation as well." Id. Section 59 has been cited with approval in Florida. See Union Oil of California, AMSCO Div. V. Watson, 468 So.2d 349, 355 (Fla. App. 1985).

The last element of res judicata is whether there is "identity of the quality of the person for or against whom the claim is made." This requires the court to determine whether "the parties in the state action had the incentive to adequately litigate the claims in the same character or capacity as would the parties to the federal action." Stockton v. Lansiq2uot, supra, 838 F.2d at 1546-47 (citing Ford v. Dania Lumber & Supply Co., 7 So.2d 594 (Fla. 1942)). The parties here (or their privies) had the incentive to, and did, litigate vigorously the claims in the state court action. Both cases revolved around the allegations by the plaintiff that Bankuty had raped her several times and thus both cases presented the same incentive for each side to prove its contentions.

In sum, the previous state court action, pursuant to the doctrine of res judicata, bars the plaintiff's sexual harassment claim. This is because the state court has already determined that Liu-Lengyel was not raped by Geza Bankuty between February and September 1997, and those allegations are the sole basis for the present claim.

Moreover, even if res judicata did not apply to bar the sexual harassment claim, collateral estoppel would. Collateral estoppel prevents identical parties from relitigating issues that have previously been decided between them Stogniew v. McQueen, 656 So.2d 917, 919 (Fla. 1995). In contrast to res judicata which broadly precludes the assertion of claims, collateral est6oppel precludes the parties "from litigating in the second suit 'issues–that is to say points and questions–common to both causes of action and which were actually adjudicated in the prior litigation.'" Id. at 919 (quoting Gordon v. Gordon, 59 So.2d 40, 44 (Fla. 1952)).

For collateral estoppel to apply, Florida law requires (1) that the parties and issues are identical; (2) that the particular matter was fully litigated and determined; (3) that the

contest resulted in a final decision; (4) and that it took place in a court of competent jurisdiction. Mobil Oil Corp. v. Shevin, 354 So.2d 372, 374 (Fla. 1977). Collateral estoppel applies in this case because the parties or their privies are identical and the issue of whether Bankuty raped Liu-Lengyel was previously litigated to a final judgment in a state court having jurisdiction of the matter.

As indicated, the first element of collateral estoppel concerns the identity of parties and issues. Like the res judicata analysis, the "identity of parties" requirement is satisfied if the parties are identical to, or were in privity with, a party to the previous lawsuit. Community Bank of Homestead v. Torcise, 162 F.3d 1084, 1087 n.7 (11th Cir. 1998). As explained previously, pp. 10-12, supra, this requirement is met because plaintiff Liu-Lengyel was a party to the previous action. See Red Carpet Corp. of Panama City Beach v. Roberts, 443 So.2d 377, 380 (Fla. App. 1983)(finding identity of parties when the first lawsuit names controlling stock owners of a corporation and the second lawsuit names the corporation they controlled).[6] Furthermore, the issue in this case whether the plaintiff was raped by Bankuty is identical to the central issue that was resolved in the previous action.

---

[6] Additionally, there is support in Florida law for applying the doctrine of collateral estoppel where, as here, the action is based upon an employer's vicarious liability. Thus, "when the liability of a master is derivative, a judgment on the perits in favor of the servant from whom the liability is derived may be set up as a defense by the master, although he was not a party to the earlier action." Akins v. Hudson Pulp & Papaer Co. Inc., 330 So.2d 757, 759 (Fla. App. 1976), cert. denied, 344 So.2d 323 (Fla. 1977)(quoting 46 Am. Jur.2d Judgments §571); see also Atlantic Cylinder Corp. v. Hetner, 438 So.2d 922, 923 (Fla. App. 1983)(asserting that a like rule should apply to corporations and corporate officers). Here, of course, t6he basis for holding NEM liable for sexual harassment is vicarious liability. Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998).

The next element of collateral estoppel is satisfied if the issue was "fully litigated and determined" in the previous court. Unquestionably, the rape issue was fully litigated in the state court. Thus, the basis for the state court claims was Liu-Lengyel's assertion that Geza Bankuty raped her repeatedly between February and September 1997. Both parties conducted discovery on the issue in the state court, and the testimony during the state court trial centered around the allegations of rape. Indeed, during closing arguments in the state court action, plaintiff's counsel framed the issue for the judge as follows: "This case is about the fact that Hongying Liu-Lengyel claims that she was sexually assaulted....And in essence, Judge, that is a decision that you are going to have to make..." (Doc. 18, pp. 363, 364).

Furthermore, as reflected in the judgment, the state court did determine this issue, specifically finding Liu-Lengyel's accusations of rape slanderous, and enjoining Liu-Lengyel and her husband from repeating allegations that "Bankuty forcibly raped...Hongying Liu-Lengyel between February 1997 and September 1997..." (Final judgment, Doc. 14, Comp. Ex. A, ¶(b)). Thus, as conceded by plaintiff's counsel, the state court found "in essence, that the acts of forcible, non-consensual sexual attacks between Hongying Liu-Lengyel and Geza Bankuty had not taken place" (Doc. 23, p.3).

The last collateral estoppel element is satisfied because the judgment was issued by a court of competent jurisdiction. Thus, the judgment was rendered by the Circuit Court of the Twelfth Judicial Circuit in Manatee County, Florida, and it is final because it was never appealed by the Lengyels. No contention is made that the Manatee County Circuit Court, which is a court of general jurisdiction, is not a court of competent jurisdiction for the first lawsuit.

Consequently, all the requirements for the application of collateral estoppel in this case have been satisfied. Accordingly, the plaintiff is foreclosed from relitigating the issue of whether she was subjected to non-consensual sexual attacks. Moreover, contrary to the plaintiff's suggestion, a different result is not called for because the plaintiff has asserted a claim under Title VII. Kremer v. Chamical Construction Corp., 456 U.S. 461 (1982).

For the foregoing reasons, the defendant is entitled to judgment as a matter of law on the plaintiff's sexual harassment claim on the grounds of both res judicata and collateral estoppel.[7]

IV.

Alternatively, the defendant has moved for a new trial pursuant to Rule 59, F.R.Civ.P., on the grounds that there is insufficient evidence supporting the jury's verdict and that two of the court's rulings were erroneous and unduly prejudicial. Rule 50(c), F.R.Civ.P., directs that the motion for a new trial be resolved even though judgment as a matter of law will be entered for the defendant.

A court may grant a motion for new trial if the verdict is contrary to the great (and not merely the greater) weight of the evidence. Williams v. City of Valdosta, 689 F.2d 964, 973 (11th Cir. 1982). Unlike the situation with a motion for judgment as a matter of law, the court on a motion for new trial may weigh the evidence, and, in weighing the evidence, is to consider not only the evidence favoring the jury verdict, but evidence in favor of the moving party as well. Id. However, the court should not substitute its own credibility choices and inferences for the reasonable credibility choices and inferences

---

[7] In light of this conclusion, it is unnecesseary to discuss the defendant's additional grounds, none of which clearly appears to have merit.

made by the jury. Rosenfield v. Wellington Leisure Prod., Inc., 827 F.2d 1493, 1498 (11th Cir. 1987). Under these standards, the defendant would clearly not be entitled to a new trial based on the contentions that there was an insufficient evidentiary basis for the jury's verdict or that the court's rulings were erroneous.

The defendant first contends that there was insufficient evidence to support the jury's finding of sexual harassment because the plaintiff failed to prove that Bankuty's conduct affected a "term, condition, or privilege of employment" (see Doc. 58, pp. 2, 4). Thus, the defendant asserts that "neither front pay nor back pay was sought" by plaintiff, which "attests to the absence of altered or adverse employment conditions" (id. at p. 4). However, a sexually hostile or abusive working environment constitutes an alteration in work conditions. Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993); Meritor Savings Bank FSB v. Vinson, 477 U.S. 57, 66-67 (1986). Ten rapes would certainly create an abusive environment. See Simon v. Morehouse Sch. Of Medicine, 908 F. Supp. 959, 970 (N.D. Ga. 1995)("this Court is compelled to conclude that the allegation of a rape in the workplace, even if it stood alone, would be sufficiently severe" to state a sexual harassment claim); see also Meritor Savings Bank FSB v. Vinson, supra, 477 U.S. at 67. Accordingly, the jury could plainly find that there was an abusive working environment.

The defendant also contends that the evidence does not support a punitive damage award because "the evidence fails to show Defendant engaged in {a] discriminatory practice with malice or reckless indifference to the protected rights of Plaintiff..." (Doc. 58, p. 11). However, ten rapes would obviously justify an award of punitive damages.

The defendant next contends that there is insufficient evidence to sustain the amount of the jury's punitive damage award under Title VII (Doc. 58, pp. 11). In this connection, the defendant argues that $75,000 is excessive because, under Title VII, punitive damages may not exceed $50,000 unless the employer has more than 100 employees, and there was no t6estimony that the defendant employed more than 100 persons (id.). This argument is not dispositive because the plaintiff also prevailed under the FCRA, which permits punitive damages awards up to $100,000, regardless of the number of employees. Fla. Stat. §760.11(5). Therefore, the amount of the jury award is sustainable under the FCRA.

The defendant also briefly argues that the court's rejection of its jury instruction on battery and decision to permit the plaintiff to testify about the alleged rapes in contravention of a state court injunction were prejudicial error. The reasons for these rulings have been stated on the record and nothing in the defendant's memorandum warrants reconsideration of the rulings or further elaboration.

Accordingly, if the ruling awarding judgment as a matter of law is overturned on appeal, the defendant would not be entitled to a new trial.

It is, therefore, upon consideration,

ORDERED:

1. That the Defendant's Motion for Judgment as a Matter of Law (Doc. 58-1) be, and the same is hereby, **GRANTED** to the extent that the judgment (Doc. 50) is **VACATED** and the Clerk is hereby **DIRECTED** to enter judgment in favor of the **DEFENDANT**.

2. That the Defendant's Motion for New Tr5ial (Doc. 58-2) be, and the same is hereby, **DENIED**.

DONE and ORDERED at Tampa, Florida, this 19th day of October 2001.

/s _____

THOMAS G. WILSON

UNITED STATES MAGISTRATE JUDGE

APPENDIX C

STATUTES

28 U.S.C. § 1331. Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

42 U.S.C. § 2000e. Unlawful Employment Practices

(a) Employer practices. It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.